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REPORTS

OF MALAYSIAN, SINGAPORE AND BRUNEI CASES DETERMINED IN THE HIGH COURTS, THE SUPREME COURT OF MALAYSIA, THE COURT OF APPEAL AND THE COURT OF CRIMINAL APPEAL OF SINGAPORE, AND THE PRIVY COUNCIL.

SINGAPORE REPORTS

RAV IE v. PUBLIC PROSECUTOR

[A.Cr.J. (Chua J.) July 1, 1987]

[Singapore – Magistrate's Appeal No. 35 of 1987]

*Road Traffic – Sentencing – Whether imprisonment mandatory under Road Traffic Act (Cap. 92), s. 67(1).**

The appellant appealed against the sentence of three months' imprisonment and three years' disqualification from holding all classes of driving licence imposed by the District Court when he was convicted on a charge of causing the death of a passenger in his car by driving the motor car in a manner which was dangerous to the public, an offence under section 67(1) of the Road Traffic Act (Cap. 92). The appellant had pleaded guilty to the charge.

The main point raised in the appeal was whether imprisonment is mandatory under section 67(1). The provision is that a person guilty of an offence under section 67(1) "shall be liable on conviction to imprisonment for a term not exceeding five years."

Held, dismissing the appeal: (1) in the present case the trial judge's view that section 67(1) of the Road Traffic Act prescribed a mandatory sentence of up to five years' imprisonment and that the section did not provide for a fine as punishment was correct;

(2) in the circumstances of the case the sentence imposed by the trial judge was not manifestly excessive.

Cases referred to:

(1) *Public Prosecutor* v. *Man b. Ismail* [1939] M.L.J. 207.
(2) *Public Prosecutor* v. *Hew Yew* [1972] 1 M.L.J. 164.
(3) *Jayanathan* v. *Public Prosecutor* [1973] 2 M.L.J. 68.

MAGISTRATE'S APPEAL.

Jeanny Ng for the appellant.

David Khoo (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Chua J.: The appellant, Rav Ie @ Raghavan Iyengar, appeals against the sentence of three months' imprisonment and three years' disqualification from holding all classes of driving licence, imposed by the District Court when he was convicted on a charge of causing the death of a passenger in his car by driving the motor car in a manner which was dangerous to the public, an offence under section 67(1) of the Road Traffic Act (Cap. 92). The appellant had pleaded guilty to the charge.

On July 20, 1985, the appellant drove along Tanglin Road at a fast speed and encroached on the wrong side of the road when negotiating a bend, and collided with an on-coming taxi. As a result of the collision the rear passenger in his car was killed on the spot. The certified cause of death was. asphyxia due to aspiration of food.

The trial Judge was of the view that section 67(1) prescribed a mandatory sentence of up to five years' imprisonment and that it did not provide for a fine as punishment.

The main point raised in the appeal is whether imprisonment is mandatory under section 67(1). The provision is that a person guilty of an offence under section 67(1) "shall be liable on conviction to imprisonment for a term not exceeding five years."

Counsel for the appellant relied on the Malaysian case of *Public Prosecutor* v. *Man b. Ismail*[1] where the words "shall be liable" were construed by Aitken J. and where he held that "shall be liable to imprisonment" in section 3(a) of the Vagrants and Decrepit Persons Enactment (F.M.S. Cap. 191) did not render a sentence of imprisonment mandatory. He said (p. 208):

"It would also seem that the learned Magistrate, who tried this particular case, was under the impression that because the section provides that every person found guilty of an offence against it "shall be liable to imprisonment for six months," therefore he was compelled to pass some sentence of imprisonment on such a person however many mitigating circumstances might be present. If that was his im-

* Now Cap. 276, 1985 Ed., s. 66(1).

pression, then in my opinion he was under an entirely wrong impression as to the meaning of the words 'shall be liable to.' To my mind they give the Court an absolute discretion as to whether it shall award a sentence of imprisonment or deal with the accused under and in accordance with the probationary provisions of section 294 of the Criminal Procedure Code. If the legislature had intended that all persons convicted of an offence against this section 3(a) of the Vagrants and Decrepit Persons Enactment should be sent to prison, whatever the circumstances may be, it would have used the expression 'shall be punished with imprisonment,' which is to be found so frequently in our Penal Code."

It is to be observed that Aitken J. was there dealing with the question whether the Court could deal with a person, who had been convicted of any offence punishable with imprisonment, under and in accordance with the probationary provisions of section 294 of the Criminal Procedure Code (F.M.S. Cap. 6). He was not dealing with the question of whether the Court had a discretion to impose a fine in lieu of imprisonment.

In *Public Prosecutor* v. *Hew Yew*[2] Raja Azlan Shah J. also construed the words "shall be liable" in section 15(4) of the Prevention of Crime Ordinance 1959 of Malaysia, which reads:

"A registered person who contravenes or fails to comply with any order or restriction imposed on him under this section shall be guilty of an offence and shall be liable to imprisonment for a term not exceeding five years and not less than two years."

The learned Judge reviewed certain authorities on the words "shall be liable" therein. They show that where provisions of law provide for a term of imprisonment or an amount by way of fine, the Courts have a discretion to impose a term of imprisonment or fine not exceeding the maximum prescribed. In the context of section 15(4) of the Prevention of Crime Ordinance, from the words "shall be liable to imprisonment for a term not exceeding five years and not less than two years," the learned Judge expressed this view (p. 164):

"From that it seems to me that the court has an absolute discretion to impose the maximum sentence of 5 years or any lesser sentence the minimum of which must not be less than two years."

In the result, he set aside the sentence of a fine imposed by the lower court and substituted a sentence of two years' imprisonment.

In *Jayanathan* v. *Public Prosecutor*[3] the following question of law was referred to the Federal Court of Malaysia:

"Whether the provision of section 15(4) of Prevention of Crime Ordinance 1959 overrules the provision of section 294 of the Criminal Procedure Code in so far as an offence against section 15 of the Prevention of Crime Ordinance is committed."

In that case, the applicant had pleaded guilty to a charge of contravening a restriction order imposed on him under section 15 of the Prevention of Crime Ordinance, 1959. The learned President bound him over in the sum of $1,000 in one surety under section 294 of the Criminal Procedure Code. The time for appeal having lapsed, the learned Deputy Public Prosecutor applied for revision of this order to the High Court on the ground that "the learned President erred in law in imposing a sentence of binding over when section 15(4) of the Ordinance clearly states 'shall be liable to imprisonment for a term not exceeding five years and not less than two years'."

The Federal Court considered the cases of *Public Prosecutor* v. *Hew Yew*[2] and *Public Prosecutor* v. *Man B. Ismail*[1] and considered the provisions of section 294 of the Criminal Procedure Code (F.M.S. Cap. 6). Ong Hock Sim F.J. delivering the judgment of the Court said (p.69):

"This section (section 294) vests the court before which a person is convicted with power to suspend sentence for such period as the court may direct, and, if the offender behaves himself during such period, he would escape punishment for his offence. If he fails to observe the conditions of his bond, he would be liable to be apprehended and dealt with for his original offence. As Thomson J. (as he then was) said in *Public Prosecutor* v. *Idris:* 'Section 294 which only applies in the case of adult offenders can only be made use of where a person has been convicted and where his conviction is for an offence punishable with imprisonment without the option of a fine.

I do not wish to lay down any hard and fast rule, which in any event would be difficult to prove, but magistrates would be well-advised only to make use of section 294 where an offence which is generally of a serious nature and which is punishable with imprisonment has been committed by an adult offender and where it is considered desirable to place him on probation.' "

The learned Judge concluded:

"In our view, if the legislature intended that section 294 is to cease to have application in respect of an offence under section 15 of the Prevention of Crime Ordinance, it should be so expressed in the clearest possible language. We can find no such provision.

Our answer to the question, we repeat, is in the negative."

Here again, the Federal Court was dealing not with the question whether the court had the discretion under section 15(4) of the Prevention of

Crime Ordinance to impose a fine in lieu of imprisonment; it decided that the accused could be bound over under section 294 of the Criminal Procedure Code.

It seems to me that, in the present case, the trial Judge's view that section 67(1) of the Road Traffic Act prescribed a mandatory sentence of up to five years' imprisonment and that the section did not provide for a fine as punishment is correct.

In the circumstances of this case, the sentence imposed by the trial Judge is not manifestly excessive.

The appeal is dismissed.

Appeal dismissed.

Solicitors: *Jeanny Ng.*

MASILAMAN VELLASAMY v. ATTORNEY-GENERAL & ANOR.

[A.C.J. (Chan Sek Keong J.C.) July 29, 1987]

[Singapore – Suit No. 6054 of 1986]

Limitation – Appeal against decision striking out writ of summons – Whether estate claim time-barred – Limitation Act (Cap. 163, 1985 Ed.), s. 6(4) – Civil Law Act (Cap. 43, 1985 Ed.), ss. 7(1) & 11(5).

This was an appeal by the plaintiff against the decision of the Assistant Registrar striking out, on the application of the first defendant, the writ of summons which was filed on December 19, 1986, on the ground that the action as indorsed on the Indorsement of Claim showed that it had been time-barred.

The plaintiff in the Indorsement claimed as administrator of the estate of Rajendran, the deceased, and on behalf of one Amirthammal under section 8 of the Civil Law Act (Cap. 30) against the second defendant as servant of the first defendant for being negligent in the fatal treatment of the deceased on or about November 7, 1983 at the Alexandra Hospital.

The plaintiff submitted that his claim was an estate claim subject to the normal limitation period of six years under section 6(1)(a) of the Limitation Act read with section 7(1) of the Civil Law Act and not, unlike a dependency claim, subject to a limitation period of three years by virtue of section 11(5) of the Civil Law Act.

Held, dismissing the appeal: (1) the estate claim of the plaintiff in the present case was in effect a claim for damages for personal injuries which, but for section 7(1) of the Civil Law Act, would not have survived at common law. Section 7(1) merely preserved the cause of action posthumously and no more. Unlike section 11(5) of the Civil Law Act in relation to dependency claims, it did not extend or purport to extend, upon the death of the injured person, the limitation period of three years prescribed by section 6(4) of the Limitation Act;

(2) section 6(4) of the Limitation Act applies to all actions for damages for negligence or breach of duty where the damages claimed include damages in respect of personal injuries;

(3) the present claim was a claim for damages for negligence and was therefore time-barred at the commencement of these proceedings.

Cases referred to:

(1) *Chan Chung Hoong* v. *Cheow Vooi Peng* [1955] M.L.J. 135.
(2) *James Patrick & Co. Proprietary Ltd.* v. *Dacie Ethel Sharpe* [1955] A.C.1.
(3) *Lloyds Bank Ltd.* v. *Eagle Star Insurance Co. Ltd.* [1951] T.L.R. 803.
(4) *Baker* v. *Bolton* (1808) 1 Camp. 493; 170 E.R. 1033.
(5) *Rose* v. *Ford* [1937] A.C. 826, 838.

APPEAL FROM REGISTRAR'S DECISION.

Yogendran for the appellant.

Jeffrey Chan (Deputy Senior State Counsel) for the respondents.

Cur. Adv. Vult.

Chan Sek Keong J.C.: This is an appeal by the plaintiff against the decision of the Assistant Registrar striking out, on the application of the 1st defendant, the Writ of Summons which was filed on December 19, 1986 on the ground that the action as indorsed on the Indorsement of Claim showed that it had been time-barred.

The Indorsement of Claim reads as follows:

"The Plaintiff as the Administrator of the estate of Rajendran s/o Vellasamy, deceased, claims damages on behalf of the said estate and on behalf of Amirthammal w/o Vellasamy under section 8 of the Civil Law Act (Cap. 30) arising out of the negligence of the 2nd defendant as servant or agent of the 1st defendant, in the fatal treatment of the deceased on or about November 7, 1983 at Alexandra Hospital, Singapore."

Counsel for the plaintiff submitted that the plaintiff's claim is an estate claim subject to the normal limitation period of six years under section 6(1)(a) of the Limitation Act read with section 7(1) of the Civil Law Act and not, unlike a dependency claim, subject to a limitation period of three years by virtue of section 11(5) of the Civil